



# Port Security Advisory (3-09)

**SUBJECT: GUIDANCE ON SELF-DEFENSE OR DEFENSE OF OTHERS BY U.S. FLAGGED COMMERCIAL VESSELS OPERATING IN HIGH RISK WATERS**

## **1. Purpose**

This document is intended to provide guidance to U.S. flagged commercial vessels and embarked personnel, including contract security personnel, not entitled to sovereign immunity and operating in High Risk Waters (HRW),<sup>1</sup> for employment of force in self-defense or defense of others, as well as defense of the vessel. This guidance does not apply to U.S. flagged vessels entitled to sovereign immunity. It does not apply to U.S. Government personnel, civilian or military, embarked on non-sovereign-immune U.S. flagged commercial vessels to provide vessel security. This document restates existing law in this area. It does not establish new standards or duties with respect to the right of self-defense or defense of others. The examples provided herein are included merely to illustrate how the outlined principles could apply to the issue of piracy. Actual situations will vary, based on the specific circumstances of a ship's defensive measures and capabilities at hand, and the facts of the situation confronted. This document does not prescribe rules of engagement. Rather, it provides guidance intended to aid companies in the development of their vessel security plan submissions for operating within HRW. This guidance should not be read to mandate specific actions at particular points of time. Nothing in this document prevents an individual from acting in self-defense or defense of others. In addition to the right of self-defense and defense of others, 33 U.S.C. § 383 provides authority for the master and crew to respond to a piratical attack, authorizing them to "oppose and defend against any aggression, search, restraint, depredation, or seizure, which shall be attempted upon such vessel..."

## **2. Definitions**

The following definitions apply for the purpose of this guidance:

- a. Self-defense or defense of others means the act of thwarting an attack upon oneself, another person, or both by using force, up to and including deadly force.
- b. Defense of the vessel means the act of using force to prevent damage to or theft of a vessel or its property. It is a concept separate from defending individuals embarked aboard the vessel. That is intended to be covered within the definition self-defense or defense of others.
- c. Imminent means may occur at any moment, ready to take place, impending, threateningly or menacingly near or at hand.
- d. Imminent danger means an attacker poses an imminent threat of great bodily harm or death to oneself or others.

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<sup>1</sup> This guidance anticipates that contracted security personnel may be embarked on U.S. flagged merchant ships operating in HRW, but may also or alternatively be embarked on U.S. flagged vessels (not entitled to sovereign immunity) providing a security escort for a U.S. flagged merchant ship operating in HRW. See USCG Minimum Guidelines for Contracted Security Services in High Risk Waters for additional guidance relevant to contracted security personnel.



Examples of imminent danger include, but are not limited to, aiming or firing weapons at a U.S. flagged vessel with individuals embarked, or an attempted armed, non-consensual boarding, without legal authority, of a U.S. flagged vessel by another vessel (other than U.S. or foreign warships, law enforcement vessels, or other vessels clearly marked as being on non-commercial government service). It might also include the act of brandishing weapons directed at crewmembers or security personnel, where there is a reasonable belief that the attacker(s) also has the means and opportunity to inflict great bodily harm or death on the individual or others in the vicinity.

The determination of imminent danger is fact dependent, and the law may be broader than the paradigm outlined above. Although the law may allow for other considerations, or use slightly differing terminology based on an individual's particular circumstances, the Coast Guard uses the following as a helpful training tool for its members to explain the concept: Imminent danger would exist when an attacker manifests apparent intent to cause great bodily harm or death to oneself or others, as demonstrated by the following elements, each of which is present at the same time:

- (1) Means. The attacker has the apparent ability, either physically (relative size, strength, expertise, or other attributes) or through the use of an object(s), to inflict great bodily harm or death to oneself or others. Physical means can include in some circumstances the use of hands or feet to choke or beat an individual. Objects can include weapons (e.g., firearms, explosives, knives, etc.), as well as other devices under the control of the attacker;
  - (2) Opportunity. The combination of circumstances by which an attacker apparently can cause great bodily harm or death to oneself or others (e.g., access to a weapon that is within range to be used against oneself or others); and
  - (3) Act. The attacker makes an overt movement which induces one to reasonably believe that he is manifesting a threat to cause great bodily harm or death to oneself or others (e.g., an attacker points or discharges a firearm or other weapon at crewmembers or security personnel, or employs or prepares to employ climbing gear for an armed, non-consensual boarding ).
- e. Great bodily harm means an injury to the body that results in unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. It is synonymous with "serious bodily injury", "serious bodily harm", "serious physical injury", or "grievous bodily injury".
- f. Force means the affirmative application of techniques or actions, typically listed within the vessel security plan, directed against a specific vessel or person(s).
- g. Non-deadly force means any force other than deadly force.
- h. Deadly force means any force that is likely to cause great bodily harm or death.
- i. Warning shot means a signal to a vessel to stop. The term does not include shots fired as a signal that the use of deadly force is imminent, a technique that should not be employed.



### 3. Guidance

#### a. Guiding principles

Vessel masters retain control of and authority over their vessels, crewmembers, and embarked security personnel at all times. Any use of force employed in accordance with the guidance set forth herein is subject to the direction of the vessel master. Only that force reasonably necessary under the circumstances should be used. Nothing in the application of this guidance shall be construed as to necessarily require personnel to meet force with equal or lesser force.

#### b. Self-defense or defense of others

In the exercise of self-defense or defense of others, crew and security personnel may use all available means to apply that force reasonably necessary to defend themselves or others from harm, including the use of deadly force if required.

#### c. Use of deadly force

Subject to the above, deadly force may only be used in self-defense or defense of others, when an individual has the reasonable belief that the person or persons to which the deadly force would be directed poses an imminent danger of death or great bodily harm. The objective when using deadly force in self-defense or defense of others is defense of life. The use of deadly force in self-defense or defense of others may include the use of ordnance fired into a vessel, if necessary for self-defense or defense of others. Accordingly, when confronted with a person or vessel that poses an imminent danger of death or great bodily harm, personnel and vessels to which this guidance applies may use reasonable force, up to and including deadly force, in self-defense or defense of others.

#### d. Use of non-deadly force

Subject to the above, non-deadly force may be used in the following circumstances:

- (1) for self-defense or defense of others.
- (2) for defense of the vessel.
- (3) to prevent the theft or, intentional damage to, or destruction of property (including the U.S. flagged vessel) that the master, crew, or security personnel are authorized to protect.

Non-deadly force tactics could include maneuvers by the vessel, deployment of sonic blasts, use of fire hoses to flood a vessel threatening to attack, the use of disabling fire by properly trained personnel, or other non-lethal means employed by crewmembers or security personnel, directed at a vessel or persons threatening attack.

#### e. Retreat

Although not required under the law, retreat (e.g., to a safe room) may be an appropriate alternative to the use of force and may be the most reasonable choice under the circumstances. This is particularly appropriate where disengaging temporarily from a confrontational situation may reduce tensions, mitigate risk, reduce a potential threat, and provide time for the arrival of additional assets or personnel, including military or law enforcement assets or personnel. U.S. flagged vessels and embarked persons, including crew and security personnel, are not required to retreat to avoid situations in which the use of force, including deadly force, is appropriate.



f. Defense of the vessel and other property

Masters always retain the inherent right to use force in defense of the vessel. Masters must inform the crew and security personnel of their authority to employ force in defense of the vessel. Masters may restrain the authority of the crew and security personnel to employ force in defense of the vessel. If a master withholds from the crew or security personnel any use of force authority for defense of the vessel, the master must approve the withheld portion prior to its use in defense of the vessel. Defense of the vessel alone does not justify deadly force. Unless otherwise directed by a master, the crew and security personnel may use non deadly force in defense of the vessel. Masters should consider all the circumstances when employing force, and resort to deadly force only when there is imminent danger of death or great bodily harm.

g. Use of signals

Signals, including firing of warning shots, may be employed, but are not required. Warning shots are not a use of force, and should not be used if they will endanger any persons or property. Moreover, warning shots should not be used as a signal that the use of deadly force is imminent.

4. The conditions of entry applicable to vessels outlined in Port Security Advisory 1-09 remain in effect.

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